

Assembly Bill No. 79

CHAPTER 133

An act to amend Section 1417.5 of, and to add Section 11108.5 to, the Penal Code, relating to criminal procedure.

[Approved by Governor July 27, 1997. Filed with
Secretary of State July 28, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 79, Granlund. Criminal procedure: return of property.

(1) Existing law provides that 60 days after the final determination of a criminal action or proceeding, the clerk of the court shall dispose of all exhibits introduced and filed in the case and remaining in the clerk's possession. Existing law provides that, on application of the owner or any person entitled to possession of exhibits or an agent designated in writing by the owner, the court shall order the release of any exhibits that will not prejudice the state.

This bill would provide instead that if the name and address of the person from whom the exhibit was taken is contained in the court record, the clerk shall notify the person that he or she may make application to the court for release of the exhibits within 15 days of receipt of the notification, and the court shall order the release of exhibits free of charge, without prejudice to the state, upon application, first, to the person from whom the exhibits were taken into custody, provided that the person was in lawful possession of the exhibits, and 2nd, to a person establishing title to, or a right to possession of, the exhibits. By imposing additional duties on court employees with respect to case exhibits, this bill would impose a state-mandated local program.

(2) Existing law provides that each sheriff or police chief shall submit descriptions of serialized property which has been reported stolen, lost, found, recovered, or under observation, directly into the appropriate Department of Justice automated property system for firearms, stolen bicycles, stolen vehicles, or other property.

This bill would generally provide, in addition, that if a law enforcement agency identifies serialized property that has been reported lost or stolen by the owner or a person entitled to possession of the property and the property has been entered into the appropriate Department of Justice automated property system pursuant to the above provision, the agency shall notify the owner or person entitled to possession of the property of the location of the property within 15 days of making the identification. This bill would create a state-mandated local program by imposing additional duties on local law enforcement with respect to serialized property.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 1417.5 of the Penal Code is amended to read:

1417.5. Except as provided in Section 1417.6, 60 days after the final determination of a criminal action or proceeding, the clerk of the court shall dispose of all exhibits introduced or filed in the case and remaining in the clerk's possession, as follows:

(a) If the name and address of the person from whom the exhibit was taken is contained in the court record, the clerk shall notify the person that he or she may make application to the court for release of the exhibits within 15 days of receipt of the notification.

(b) The court shall order the release of exhibits free of charge, without prejudice to the state, upon application, to the following:

(1) First, the person from whom the exhibits were taken into custody, provided that the person was in lawful possession of the exhibits.

(2) Second, a person establishing title to, or a right to possession of, the exhibits.

(c) If the party entitled to an exhibit fails to apply for the return of the exhibit prior to the date for disposition under this section, the following procedures shall apply:

(1) Exhibits of stolen or embezzled property other than money shall be disposed of pursuant to court order as provided in Section 1417.6.

(2) Exhibits of property other than property which is stolen or embezzled or property which consists of money or currency shall, except as otherwise provided in this paragraph and in paragraph (3), be transferred to the appropriate county agency for sale to the public in the same manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the county determines that any property is needed for a public use, the property may be retained by the county and need not be sold.



(3) Exhibits of property, other than money, currency, or stolen or embezzled property, that are determined by the court to have no value at public sale shall be destroyed or otherwise disposed of pursuant to court order.

(4) Exhibits of money or currency shall be disposed of pursuant to Section 1420.

SEC. 2. Section 11108.5 is added to the Penal Code, to read:

11108.5. (a) If a law enforcement agency identifies serialized property that has been reported lost or stolen by the owner or a person entitled to possession of the property and the property has been entered into the appropriate Department of Justice automated property system pursuant to Section 11108, the agency shall notify the owner or person entitled to possession of the property of the location of the property within 15 days of making the identification. If the location of the property was reported by a licensed pawnbroker or secondhand dealer pursuant to Section 21630 of the Business and Professions Code, notice shall be given to the party who reported the property lost or stolen pursuant to Section 21647 of the Business and Professions Code.

(b) If the property is in the custody of the law enforcement agency and it is determined that the property is no longer required for use as evidence in a criminal case, the property shall be made available to the person entitled to possession pursuant to Section 1417.5.

(c) Subdivision (a) shall not apply to the return to an owner of a lost or stolen vehicle, as defined in Section 670 of the Vehicle Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district pursuant to this act because counties will receive funding under the Brown-Presley Trial Court Funding Act (Chapter 13 (commencing with Section 77000) of Title 8 of the Government Code) in lieu of that requirement.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

